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FLORIDA EXPERIMENT STATION BREEDER SEED

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March 29, 2004

Susan Beth McCormick Ewoldt
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RE: Application No. 10/613,314
Filing Date 07/07/2003
First Named Inventor Paul M. Lyrene
Confirmation No. 4839
Art Unit 1661

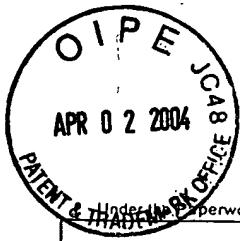
I am enclosing the revised write up along with a marked up copy you requested. We have attempted to clarify all objections. Please let us know if there is anything else you need.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas D. Stadsklev".

Thomas D. Stadsklev
Manager

NOTICE TO BUYER - Limitation on Warranty and Remedies: Florida Foundation Seed Producers, Inc. warrants that all seed sold conform to the label description attached to the container with recognized tolerances under state and federal seed laws. There are no other warranties or representations as to these seeds, and the foregoing express warranty excludes all other warranties, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose. Further, without limitation, Florida Foundation Seed Producers, Inc. makes no warranty, express or implied, as to crop yields of this seed or as to the response of this seed to any environmental condition, disease, insect infestation, chemical application, farming practices or other growing condition. The exclusive remedy for loss or damages due to breach of the express warranty set forth above or other cause is limited to the refund of the purchase price of the seed, and Florida Foundation Seed Producers, Inc., shall not be liable for any consequential damages resulting from any such breach. The buyer, by acceptance of this seed, agrees to the terms and conditions of this statement of limitation of warranty and remedies. Seed not accepted on these terms and conditions may be returned to Florida Foundation Seed Producers, Inc., in unopened containers within ten (10) days.



PTO/SB/92 (08-00)

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

on _____

3-29-04

Date

Signature

Thomas D. Stadsklev

Typed or printed name of person of signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,314	07/07/2003	Paul M. Lyrene		4839

7590 12/31/2003

Thomas D. Stadsklev
Florida Foundation Seed Producers, Inc.
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EXAMINER

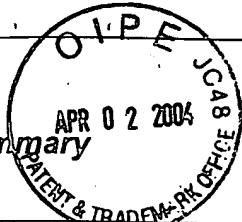
MCCORMICK EWOLDT, SUSAN BETH

ART UNIT	PAPER NUMBER
	1661

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary



Application No.	LYRENE, PAUL M.
10/613,314	
Examiner	Art Unit
Susan B. McCormick	1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Detailed Action

Drawings

The drawings have been approved by an official draftsperson.

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

A. The specification does not "particularly point out where and in what manner the variety of plant has been asexually reproduced" in the statement of stability through succeeding asexual propagation. Correction is required.

B. Applicant is advised that the observed plant must reproduce true to type and be stable in successive generations in order to obtain a U.S. Plant Patent for the observed plant. Applicant should set forth a statement in the specification, such as "The observed plant retains its distinctive characteristics and reproduces true to type in successive generations."

C. Applicant should disclose the parents of the observed as stated in the MPEP 1605.

D. Applicant is requested to indicate whether the parent cultivars have been patented in the United States, are currently the subjects of pending U.S. plant patents applications, or not patented. If patented, --(U.S. Plant Patent No.)-- should be inserted after the appropriate cultivar name. If subject of a pending application, such should be referred to by serial number. If not patented, --(not patented)-- should be inserted after the appropriate cultivar name.

E. Applicant should be descriptive with the comparison between the parents and the observed plant, 'Savory' in how they differ from each other.

F. On page 2, in the specification under the "Brief Description of Drawings," Applicant should change the captions provided for the drawings, by replacing them with figure numbers (FIG. 1, FIG. 2, etc.), not "first drawing" or "second drawing" as the photographic illustrations and the specification must correspond to each other in this regard.

G. On page 3, line 1, Applicant should insert a --- after "markets."

H. Applicants should set forth the branch diameter of the observed plant.

I. Applicant should set forth in the specification the trunk diameter (usually measured at a given height above soil level) in the interest of providing as complete a description of the observed plant as is reasonably possible.

J. Page 4, line 4, Applicant should delete the ".." and insert ---.

K. On page 5, line 22, the color chart number for 'Neutral Gray' is not Pantone 18-4005. Correction is needed.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

Future Correspondence

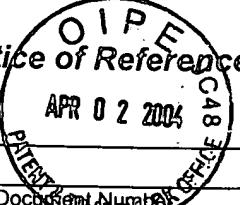
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (703) 305-1682. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The official fax number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

sbm

Anne Marie Grunberg
ANNE MARIE GRUNBERG
PATENT EXAMINER

 Notice of References Cited APR 02 2004		Application/Control No.	Applicant(s)/Patent Under Reexamination	
		10/613,314	LYRENE, PAUL M.	
		Examiner	Art Unit	Page 1 of 1
		Susan B. McCormick	1661	

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-			
B	US-			
C	US-			
D	US-			
E	US-			
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)	
	U		
	V		
	W		
	X		

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.